IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

RSA.No. 1143 of 2006(C)

AS.286/2004 of ADDL.DISTRICT COURT, THRISSUR
OS.3278/2000 of I ADDL.M.C.,THRISSUR

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APPELLANT/DEFENDANT;

SREEDHARAN, S/O.CHETTUPUZHA KITTU,
CHETTUPUZHA HOUSE, KIZHAKAMPURAM DESOM,
ARANATTUKARA VILLAGE, THRISSUR, NOW RESIDING AT
THEKKETHARA THENKURUSSY POST, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

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1. DEVADY, W/O.PUTHURUTHY GOPALAN,
D/O.CHETTUPUZHA KITTU, CHEMBUKKAVU VILLAGE,
THRISSUR.

2. SARADA, W/O.MAYANNAUKARAN GANGADHARAN
D/O.CHETTUPUZHA KITTU, CHALAKKUDY VILLAGE,
THRISSUR.

3. KUNJUNNY, H/O.SUMATHY,
ENKAKATTIL HOUSE, PERINGAVU VILLAGE, THRISSUR.

4. THANKA, D/O.KUNJUNNY,
ENKAKKATTIL HOUSE, DO.

5. RAJAN, S/O.KUNUNNY, DO.

6. SUKUMARAN, S/O.KUNJUNNY, DO.

7. CHANDRIKA, D/O.KUNJUNNY, DO.

8. SASI, S/O.KUNJUNNY, DO.

9. MARAYANI, D/O.KUNJUNNY, DO.

10. GOPI, S/O.KUNJUNNY, DO.

11. SHEEBA, D/O. KUNJUNNY, DO.

12. LEELA, W/O.LATE CHETTUPUZHA BALAN,
LALOOR DESOM, ARANTTUKARA, THRISSUR.

13. SAJEEVAN, S/O.LATE BALAN,
CHETTUPUZHA HOUSE, LALOOR DESOM,
ARANATTUKARA VILLAGE, THRISSUR.

14. SINDHU, D/O.LATE BALAN, DO.

BY ADV. SRI.DINESH MATHEW J.MURICKEN (CAVEATOR)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

R.S.A.No.1143 OF 2006

Dated this the 11th day of December, 2006

JUDGMENT

1. This second appeal is by the defendant in a suit for partition.

2. The plaintiffs sued contending that the said property belonged to Nani, the paternal grand mother of plaintiffs 1 and 2 and the defendant, as also late Balan, late Sumathi and late Janaki. Kittu, the father of plaintiffs 1and 2 predeceased his mother.

3. In opposition to the suit for partition, defendant set up a plea of adverse possession. According to him, since 1974, he is in exclusive possession and enjoyment and held out Ext.P1 as settlement deed created by him in 2000. The court below, however, found that the execution of Ext.P1 by the defendant a few months of the initiation of the suit in the year 2000 is no material to uphold ouster. The court below concurrently held that the defendant failed to establish the plea of ouster.

4. Having heard learned counsel for the parties and having perused the impugned judgment, I do not find that the judgment is vitiated on any illegality or of any perverse appreciation of facts. Therefore, no substantial question of law arises for decision under section 100 of the Code of Civil Procedure in this second appeal. This second appeal does not merit admission. It is dismissed in limine.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.